

Proposed technical correction:

**SECTION #.** G.S. 150B-21.2 reads as rewritten:

**"§ 150B-21.2. Procedure for adopting a permanent rule.**

(a) Steps. – Before an agency adopts a permanent rule, the agency **must** comply with the requirements of G.S. 150B-19.1, and it **must** take the following actions:

- (1) Publish a notice of text in the North Carolina Register.
- (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
- (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. – A notice of the proposed text of a rule **must** include all of the following:

- (1) The text of the proposed rule, unless the rule is a readoption without substantive changes to the existing rule proposed in accordance with G.S. 150B-21.3A.
- (2) A short explanation of the reason for the proposed rule.
- (2a) A link to the agency's ~~Web site~~website containing the information required by G.S. 150B-19.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The (i) period of time during which and ~~the (ii)~~ person within the agency to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) Repealed by Session Laws 2013-143, s. 1, effective June 19, 2013.

(d) Mailing List. – An agency **must** maintain a mailing list of persons ~~who that~~ have requested notice of ~~rule making~~rulemaking. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it **must** mail a copy of the notice ~~or of~~ text to each person on the mailing list ~~who that~~ has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. – An agency **must** hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency **must** accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.


An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public

hearing on a proposed rule when it is not required to do so, the agency **must** publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register **must** be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency **shall** publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. – An agency **must** accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in connection with the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency **must** consider fully all written and oral comments received.


(g) Adoption. – An agency **shall** not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and **shall** not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency **shall** review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency **shall** not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

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- (1) Affects the interests of persons ~~who; that,~~ based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.
  - (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
  - (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it **shall** not take subsequent action on the rule without following the procedures in this Part. An agency **must** submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. – An agency **must** issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation **must** state the principal reasons for and against adopting the rule and **must** discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency **must** issue the explanation within 15 days after receipt of the request for an explanation.



(i) Record. – An agency **must** keep a record of a ~~rule-making~~rulemaking proceeding. The record **must** include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2; 1983, c. 927, ss. 3, 7; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), (7); 1987, c. 285, ss. 7-9; 1989, c. 5, s. 1; 1991, c. 418, s. 1; 1995, c. 507, s. 27.8(d);

1996, 2nd Ex. Sess., c. 18, s. 7.10(e); 2003-229, s. 4; 2011-398, s. 5; 2013-143, s. 1; 2013-413, s. 3(a)."

Explanation:

Ashley Snyder, staff attorney for the Rules Review Commission, brought this technical correction to our attention. Section 27.8(d) of Chapter 507 of the 1995 Session Laws incorrectly enacted "or text," rather than the correct "of text." This would rectify that error, as well as make other standard clean-up changes to the statute.

Usages of "shall" and "must" are highlighted. In this particular statute, "shall" is only used six times, while "must" is used 18 times. Of the six "shall" usages, four are "shall not."

Background information:

GENERAL ASSEMBLY OF NORTH CAROLINA  
1995 SESSION

CHAPTER 507  
HOUSE BILL 230

AN ACT TO APPROPRIATE FUNDS TO PROVIDE EXPANSION EXPENDITURES  
AND CAPITAL IMPROVEMENTS FOR STATE DEPARTMENTS,  
INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

**PART 1. INTRODUCTION AND TITLE OF ACT**

The General Assembly of North Carolina enacts:

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**IMPROVEMENT OF THE ADMINISTRATIVE RULES**

**PROCESS/LEGISLATIVE OVERSIGHT/FISCAL ACCOUNTABILITY**

Sec. 27.8 LEGISLATION IMPROVING THE ADMINISTRATIVE RULES  
PROCESS

...

**PROCEDURE FOR ADOPTING A PERMANENT RULE**

...

(d) G.S. 150B-21.2 reads as rewritten:

**"§ 150B-21.2. Procedure for adopting a permanent rule.**

(a) Steps. – Before an agency adopts a permanent rule, it must take the following actions:

- (1) Publish a notice of rule-making proceedings in the North Carolina Register, unless the proposed rule is substantially the same as a temporary rule published in the North Carolina Register.
- (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
- (3) Publish the text of the proposed rule in the North Carolina Register.

- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

~~Notice.—Before an agency adopts a permanent rule, it must publish notice of its intent to adopt a permanent rule in the North Carolina Register and as required by any other law. The notice published in the North Carolina Register must include all of the following:~~

- ~~(1) Either the text of the proposed rule or a statement of the subject matter of the proposed rule making.~~
- ~~(2) A short explanation of the reason for the proposed action.~~
- ~~(3) A citation to the law that gives the agency the authority to adopt the proposed rule, if the notice includes the text of the proposed rule, or a citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making, if the notice includes only a statement of the subject matter of the proposed rule making.~~
- ~~(4) The proposed effective date of the proposed rule, if the notice includes the text of the proposed rule, or the proposed effective date of a rule adopted on the subject matter of the proposed rule making, if the notice includes only a statement of the subject matter of the proposed rule making.~~
- ~~(5) The date, time, and place of any public hearing scheduled on the proposed rule or subject matter of the proposed rule making.~~
- ~~(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (c) requires the agency to hold a public hearing on the proposed rule when requested to do so.~~
- ~~(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule or subject matter of the proposed rule making.~~
- ~~(8) If a fiscal note has been prepared for the proposed rule or will be prepared when a rule is proposed on the subject matter of the proposed rule making, a statement that a copy of the fiscal note can be obtained from the agency.~~

(b) Notice of Rule-Making Proceedings. – A notice of rule-making proceedings published in the North Carolina Register must include all of the following:

- (1) A statement of the subject matter of the proposed rule making.
- (2) A short explanation of the reason for the proposed action.
- (3) A citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making.
- (4) The person to whom questions or written comments may be submitted on the subject matter of the proposed rule making.

Publication in the North Carolina Register of an agency's rule-making agenda satisfies the requirements of this subsection if the agenda includes the information required by this subsection.

(c) Text After Notice of Rule-Making Proceedings. – A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed rule.
- (2) A short explanation of the reason for the proposed rule.
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

An agency shall not publish the proposed text of a rule until at least 60 days after the date the notice of rule-making proceedings for the proposed rule was published in the North Carolina Register.

~~(b)(d)~~ Mailing List. – An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes ~~a rule-making notice~~ in the North Carolina ~~Register~~, Register a notice of rule-making proceedings or the text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice of rule-making proceedings on the ~~rule or the~~ subject matter ~~for rule-making~~ described in the ~~notice~~. notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

~~(e)(e)~~ Hearing. – An agency must hold a public hearing on a rule it proposes to adopt in two circumstances and may hold a public hearing in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.

An agency must hold a public hearing on a rule it proposes to adopt in the following two circumstances:

- ~~(1)~~ The agency publishes a statement of the subject matter of the proposed rule making in the notice in the North Carolina Register.
- ~~(2)~~ The if the agency publishes the text of the proposed rule ~~in the notice~~ in the North Carolina Register and all the following apply:
  - ~~a.(1)~~ The notice of rule-making proceedings does not schedule a public hearing on the proposed rule.
  - ~~b.(2)~~ Within 15 days after the notice is published, the The agency receives a written request for a public hearing on the proposed ~~rule~~. rule within 15 days after the notice of rule-making proceedings is published.

- e. ~~The proposed rule is not part of a rule-making proceeding the agency initiated by publishing a statement of the subject matter of proposed rule making.~~
- ~~d.~~(3) The proposed text is not a changed version of proposed text the agency previously published in the course of rule-making proceedings but did not adopt.

An agency may hold a public hearing on a proposed rule in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.

~~(d) Text After Subject Matter Notice. — When an agency publishes notice of the subject matter of proposed rule making in the North Carolina Register, it must subsequently publish in the North Carolina Register the text of the rule it proposes to adopt as a result of the public hearing and of any comments received on the subject matter. An agency may not publish the proposed text of a rule for which it published a subject-matter notice before the public hearing on the subject matter.~~

~~(e)(f) Comments. — An agency must accept comments on a notice of proposed rule-making proceedings published in the North Carolina Register until the text of the proposed rule that results from the notice is published. An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and that requires a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must accept comments on the text of a-any other proposed rule published in the North Carolina Register for at least 30 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must accept comments on a statement of the subject matter of proposed rule making until the public hearing on the subject matter.~~ An agency must consider fully all written and oral comments received.

~~(f)(g) Adoption. — An agency may shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and may shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. An agency may shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (e)-(f) of this section.~~

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons who, based on either the notice published in the North Carolina Register of rule-making proceedings or the proposed text of the rule, rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.



- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it ~~may~~shall not take subsequent action on the rule without following the procedures in this Part.

~~(g)~~(h) Explanation. – An agency must issue a concise written statement explaining why the agency adopted a rule if, within 30 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule.

~~(h)~~(i) Record. – An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, and any written explanation made by the agency for adopting the rule."

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#### **EFFECTIVE DATE**

Sec. 28.13. Except as otherwise provided, this act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 28th day of July, 1995.

Dennis A. Wicker  
President of the Senate

Harold J. Brubaker  
Speaker of the House of Representatives